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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE *# 99*
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PSG

TERRACE ELLIS

CV 15-04974

Case No.

Plaintiff,

COMPLAINT AND DEMAND FOR JURY TRIAL

v.

PERSOLVE, LLC., ACCOUNT
RESOLUTION ASSOCIATES,
SHVETA KUMBHANI, AND
DOES 1-20

**VIOLATIONS OF TELEPHONE CONSUMER
PROTECTION ACT 47 U.S.C. § 227, FAIR CREDIT
REPORTING ACT 15 U.S.C. § 1681 et. seq., FAIR
DEBT COLLECTION PRACTICES ACT 15 U.S.C.
§1692, AND CALIFORNIA'S ROSENTHAL FAIR
DEBT COLLECTION PRACTICES ACT §1788 et.
seq.**

Defendants.

Demand Exceeds \$10,000.00

PLAINTIFF'S COMPLAINT

Plaintiff alleges the following against Defendants Persolve, LLC ("Persolve"), Account Resolution Associates ("AR"), and Shveta Kumbhani, Chief Compliance Officer for Persolve.

INTRODUCTION

1. Count 1 of Plaintiff's Complaint is based on violation of 47 U.S.C. §227, the Telephone Consumer Protection Act (TCPA).

2. Count 2 of Plaintiff's Complaint is based on violations of 15 U.S.C. § 1681 et. seq., the Fair Credit Reporting Act (FCRA).

3. Count 3 of Plaintiff's Complaint is based on violations of 15 U.S.C §1692 et seq. the Fair Debt Collection Practices Act. (FDCPA).

1 4. Count 4 of Plaintiff's Complaint is based on violations of *Ca. Civ. Code §1788 et seq.*,
2 California's Rosenthal Fair Debt Collection Practices Act (RFDCPA).

3
4 **JURISDICTION AND VENUE**

5 5. The jurisdiction of this Court is conferred by *12 U.S.C. §2614; 47 U.S.C. §227(b)(3), 15*
6 *U.S.C. §1692; Ca. Civ. Code 1788.30(f), 28 U.S.C. §1331, and U.S.C. §1681p*

7 6. Venue is proper in this District pursuant to *28 U.S.C. §1391b*.

8 7. Defendants conduct business in the state of California, and therefore, personal
9 jurisdiction is established.

10
11 **PARTIES**

12 8. Plaintiff is a natural person residing in San Jose, Santa Clara County, California

13 9. Plaintiff is a consumer as that term is defined by the FCRA and FDCPA and
14 RFDCPA.

15 10. Defendants are debt collectors as that term is defined by the FDCPA and RFDCPA.
16 They are also "furnishers" of credit information to the national consumer reporting
17 agencies and are subject to the FCRA.

18 11. Defendants Persolve and AR are national companies conducting business in California.

19 12. Defendant Shveta Khumbani is employed by Persolve as Chief Compliance Officer,
20 and is sued individually in this action for her violative debt collector acts.

21 13. Plaintiff is informed and believes and based on such information and belief aver that
22 Defendants and DOE Defendants 1 through 20, inclusive, and each of them, are and at all
23 material times have been, the agents, servants or employees of each other, purporting to act
24 within the scope of said agency, service or employment in performing the acts and omitting to
25 act as averred herein.

26
27 **FACTUAL ALLEGATIONS**
28

1 14. In 2012 Defendants Persolve and AR began their attempts to collect a consumer debt
2 from Plaintiff that she did not owe.

3 15. Defendants' attempts to collect a debt on its own behalf, or on behalf of Crown Asset
4 Management ("Crown").

5 16. Defendant asserts in its complaint that the debt, which Plaintiff does not owe,
6 involved a Barclays Bank Delaware account.

7 17. Plaintiff is informed and believes that Barclays never represented to Defendant that
8 Plaintiff was obligated to any account with Barclays.

9 18. Plaintiff never applied for a Barclays credit card.

10 19. Plaintiff did not have an account with Barclays.

11 20. Plaintiff had no credit transactions involving Barclays, nor did she owe any debt to
12 Barclays.

13 21. Plaintiff is informed and believes that Defendant Persolve is a debt buyer who
14 regularly engages in the business of purchasing charged-off consumer debt for collection
15 purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-
16 at-law for collection litigation.

17 22. The debt is purchased "as is", "with all faults" and without recourse or warranties.
18 The accuracy of said information in the purchased debt files is suspect at best, according to the
19 Federal Trade Commission. (*See The Structure and Practices of the Debt Buying Industry,*
20 *January 2013*).

21 23. Despite the absence of any account, credit transactions or debt with Barclays,
22 involving Plaintiff, Defendant Persolve alleged a permissible purpose with the national credit
23 reporting agencies when it obtained Plaintiff's credit report on three (3) separate occasions:
24 Experian (January 5, 2012 and February 14, 2012), and Equifax on (July 30, 2013). Plaintiff
25 discovered these credit pulls on or about March 14, 2014.

24. Despite the absence of any account, credit transactions or debt with Barclays, involving Plaintiff, Defendant AR alleged a permissible purpose with the national credit reporting agencies when it obtained Plaintiff's credit report on October 8, 2013 and October 9, 2013 from Experian; Plaintiff discovered both these credit inquiries on or about October 31, 2013. AR also obtained Plaintiff's credit report on September 17, 2014, which Plaintiff discovered sometime after September 17, 2014.

25. The FCRA allows access to a consumer's credit report only under specific circumstances where a permissible purpose exists. *See 15 U.S.C. §1681(b)(a) (2006)* ("[A]ny consumer reporting agency may furnish a consumer report under the following circumstances and no other"). As for "permissible purposes," Congress declared a credit reporting agency may provide a consumer's credit report:

To a person the credit reporting agency has reason to believe "intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;" or "otherwise has a legitimate business need for the information in connection with a business transaction that is initiated by the consumer." Emphasis added

26. 15 U.S.C. §§ 1681 b(a)(3)(A), (a)(3)(F)(i) (2006). According to §1681b(f), "A person shall not use or obtain a consumer report for any purpose unless (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and (2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification."

27. Persolve and AR not only obtained a copy of Plaintiff's credit report without a permissible purpose, but also began reporting inaccurate trade lines on Plaintiff's credit report as follows:

- Inaccurate trade line was reported by Persolve on Equifax credit report, which continued after Plaintiff discovered the inaccuracy and disputed its veracity with Equifax sometime in the latter part of November 2013.

- 1 • Persolve did not re-investigate the trade line, nor did it provide accurate, clear and complete results to the reporting agencies; instead, it continued to report inaccurate information in December 2013 and thereafter;
- 2 • Inaccurate trade line was reported by AR on Transunion credit report, which continued after Plaintiff discovered the inaccuracy and disputed its veracity with Transunion on March 28, 2014;
- 3 • AR did not re-investigate the trade line, nor did it provide accurate, clear and complete results to the reporting agencies; instead, it continued to report inaccurate information in April 2014 and thereafter;
- 4 • AR also reported inaccurate trade line on Equifax and Experian credit reports;
- 5 • Plaintiff disputed the Equifax trade line in March 2014, and the Experian trade line in the latter part of November 2013;
- 6 • AR continued to report inaccurate, disputed information on both the Equifax and Experian credit reports without conducting a re-investigation and without reporting accurate, clear and complete results of that investigation to Equifax and Experian.

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10 28. Under the requirements of FCRA, anyone who furnishes consumer information to a
11 consumer reporting agency is a “furnisher” of information under the FCRA. Furnishers have a
12 general duty to correct and update information submitted to the credit bureaus, if that
13 information is incorrect. The FCRA also requires furnishers to note when a consumer disputes
14 information being furnished to a credit reporting agency. FCRA 1681s-2(b) requires furnishers
15 to conduct a reasonable investigation when a consumer disputes a trade line and to convey to the
16 credit reporting agencies an accurate, clear and complete report of the results of its investigation.

17
18 29. Defendants should have known that the account was not verifiable because of
19 Plaintiff’s disputes to the national reporting agencies indicating that the “account did not belong”
20 to her.

21
22 30. Plaintiff is informed and believes that Defendants’ failure to note the account as
23 “disputed” negatively impacted her credit score and lowered her credit worthiness, a valuable
24 asset to Plaintiff in the commercial market place.

25 31. Plaintiff alleges that her credit standing which is an item of personal property and
26 reputation has been damaged by reason of the aforementioned acts of Defendants including the
27 promulgation and offering of false information concerning the status of a creditor’s rights and
28 debtors alleged deficient payments when the information was patently false and fraudulent. The
rating based on this false information caused marked damages as Plaintiff’s rating decreased as a

1 direct and proximate result of the false information reported.

2 32. Plaintiff's credit history has now been altered and rendered to be substandard and
3 reflective of a bad credit rating *vis a vis* the norm of the industry standards causing Plaintiff's
4 credit worthiness (a valuable personal property right) to be defamed, resulting in her inability to
5 obtain credit, or alternatively, an inability to obtain more attractive rates in the commercial
6 market place.

7 33. Plaintiff seeks damages to be proved at the time of trial and, if proper, an order for
8 equitable relief to remedy these infractions and for damages against the Defendants who
9 proximately caused this harm.

10 34. Violation of this duty is alleged actually and proximately causing damages to
11 Plaintiff by defaming Plaintiff's **credit reputation** and **credit standing** and causing her
12 financially induced emotional distress.

13 35. In addition to the violative acts mentioned above, Persolve representative Dave Gill
14 called Plaintiff's cell phone number (408-621-6210) from 818-534-3125 on March 13, 2014,
15 using an automatic telephone dialing system (ATDS).

16 36. Plaintiff did not provide her cell phone number to either Barclays, Crown or to any
17 of the Defendants named herein.

18 37. Neither Barclays nor Defendants were given "prior express consent" to contact
19 Plaintiff's cell phone.

20 38. On March 15, 2014, Plaintiff called Dave Gill and left a voicemail message
21 informing him that his call to her was in error and to please have his company cease calls to her
22 cell phone.

23 39. On March 28, 2014 Persolve representative Jim Frank called Plaintiff's cell phone
24 number (408-621-6210) using an automatic telephone dialing system (ATDS). Frank's call was
25 made from 818-534-3113.

26 40. Persolve and AR disclose their use of ATDS equipment on their website.

27 41. Plaintiff is informed and believes that this equipment was used to place calls to her
28

1 cell phone.

2 42. Plaintiff sent a notice of dispute and debt validation letter to Defendant AR on April
3 12, 2014 (certified #7013-2630-0001-5336-6598). AR failed to respond and did not notify the
4 national credit reporting agencies that the debt was disputed.

5 43. Plaintiff sent a letter to Defendant Persolve on November 4, 2015. Persolve's
6 November 19, 2015 response, sent and signed by its Chief Compliance Officer Shveta Kumbhani
7 was a further attempt to collect a debt, and stated the following: "We have requested additional
8 documentation from our assigner and will provide copies to you upon receipt." Plaintiff has yet
9 to receive the referenced documentation. Further, Persolve failed to notify the national credit
10 reporting agencies that the debt was disputed.

11 44. Plaintiff is informed and believes that Defendants knew or should have known at
12 the time it obtained Plaintiff's credit report that Plaintiff had signed no credit application with
13 Barclays.
14

15 45. Plaintiff is informed and believes that Defendants also knew or should have
16 known that Plaintiff neither engaged in credit or business transactions with Barclays, nor did
17 she owe Barclays a debt; a fact evidenced by the absence of any agreement, account, or
18 promise to pay Barclays.
19

20 46. Further, Defendants should have known that Plaintiff had no account with
21 Barclay's as Plaintiff's multiple disputes to the national reporting agencies clearly indicated
22 that the "account did not belong to her".
23

24 47. Plaintiff avers that Defendants' failure to respond to her debt validation requests
25 offers further support of the fact that Defendants either knew or should have known that
26 Plaintiff had no contract, account or debt with Barclays. Simply put, if such documentation
27 existed, Defendants would have provided it to Plaintiff.

28 48. Around the same time (2012) Defendant began its unlawful activities against Plaintiff, she

1 received a phone call from the College Station, Texas Police Department notifying her that her personal
 2 identifying information had been discovered on the computer of a suspect in an Identity Theft criminal
 3 investigation (case #: 12-003961), possibly via a "Trojan" virus she inadvertently clicked while using the
 4 internet. According to the police department, this information would enable the suspect to create credit
 5 card accounts and transact purchases in Plaintiff's name.

6 49. Plaintiff is informed and believes that this Identity Theft scheme operated for an
 7 indeterminate period of time and either contributed to and/or resulted in the creation of the account
 8 referenced in this case. The account does not belong to Plaintiff.

9 50. Plaintiff is unclear as to Defendants' intention for obtaining Plaintiff's credit
 10 report, but in the absence of an account, transactions or debt involving Plaintiff, their
 11 unlawful, willful and intentional behavior certainly did not conform to the legitimate business
 12 purposes specified by the FCRA under the definition of "permissible purpose".
 13

14 COUNT 1

15 DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

16 Against Defendant Persolve

17 51. Plaintiff re-alleges paragraphs 1-50 as though fully set forth herein.

18 52. Defendant Persolve demonstrated willful or knowing non-compliance with *47 U.S.C.*
 19 *§227(b)(1)(A)* by using an automatic telephone dialing system to call Plaintiff's number, which is
 20 assigned to a cellular telephone service.
 21

22 53. Defendant Persolve did not have prior express consent when using an
 23 automatic telephone dialing system to place the March 13th and March 28th 2014,
 24 phone calls to Plaintiff's cell phone in violation of *47 U.S.C. §227(b)(1)(A)(iii)*.
 25 Plaintiff is entitled to damages of \$1500 per violation pursuant to *47 U.S.C. §227(b)(3)(B)*.
 26

27 COUNT II

28 VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

Against Defendants Persolve and Account Resolution Associates

54. Plaintiff re-alleges paragraphs 1-53 as though fully set forth herein.

On multiple occasions within the two years prior to filing this suit, Defendants Persolve and AR violated the Fair Credit Reporting Act, 15 U.S.C. §1681s-2b by failing to fully and properly investigate Plaintiff's dispute regarding the account, and/or by reporting inaccurately the results of such investigation.

55. As a result of this conduct, action and inaction of Defendants, Plaintiff suffered actual damages including without limitation, by example only and as described herein: loss of credit, damage to reputation, embarrassment, humiliation, and other emotional and mental distress.

56. Defendants' conduct, action and inactions were willful, rendering them liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. §1681n. In the alternative, Defendants were negligent, entitling the Plaintiff to recover under 15 U.S.C. §1681o.

57. The Plaintiff is entitled to recover actual damages, statutory damages, costs and attorney's fees from Persolve and AR in an amount to be determined by the Court pursuant to 15 U.S.C. §1681n and §1681o.

COUNT III

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

**Against Defendants Persolve, Account Resolution Associates and Shveta Kumbhani,
Chief Compliance Officer**

58. Plaintiff realleges paragraphs 1-57 as though fully set forth herein.

59. Plaintiff is a consumer within the meaning of the *FDCPA*, 15 U.S.C. §1692a(3).

60. Defendants are debt collectors within the meaning of the *FDCPA*, 15 U.S.C.

§1692a(6).

61. Persolve and AR's Chief Compliance Officer Kumbhani violated the FDCPA 1692e in her November 19, 2014 letter by asserting false, deceptive or misleading representations in stating that Plaintiff owes a debt in the amount of 13,968.93.

62. Persolve and AR violated 1692e(8) by communicating false credit information, including the failure to communicate that a debt is disputed; 1692(f) by using unfair or unconscionable means to or attempt to collect the alleged debt; 1692 (f)(1) by attempting to collect any amount not authorized by the agreement creating the debt or permitted by law; and 1692(g) in their failure to send the consumer a 30-day validation notice within 5 days of the initial communication.

63. Defendants' Persolve and AR's continuous reporting on Plaintiff's credit report also violates 15 U.S.C §1692e(10) in that it constitutes deceptive means to collect a debt or obtain information about a consumer.

COUNT IV

VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION

PRACTICES ACT

Against Defendants Persolve, Account Resolution Associates and Shveta Kumbhani, Chief Compliance Officer

64. Plaintiff realleges paragraphs 1-63 as though fully set forth herein.

65. Plaintiff is a natural person as that term is defined by *Ca. Civ. Code §1788.2(g)*.

66. Defendants are debt collectors as that term is defined by *Ca. Civ. Code §1788.2 (c)*,

67. Persolve's and AR's Defendants' Chief Compliance Officer Kumbhani 's November 19th letter failed to include disclosures required under California's Rosenthal Fair Debt Collection Practices Act (*Ca. Civ. Code §1812.700*).

68. Defendants Persolve and AR further violated *Ca. Civ. Code §1788.13 (l)* by demanding money from Plaintiff without having been actually assigned a claim involving

1 Plaintiff.

2 69. Defendants' acts as described above were done intentionally with the purpose
3 of coercing Plaintiff to pay the alleged debt.

4 70. As a proximate result of Defendants' violations enumerated above, Plaintiff has been
5 damaged in amounts, which are subject to proof.

6 71. Defendants Persolve, Account Resolution Associates and Shveta Kumbhani's
7 violations of the Rosenthal Act
8 were willful and knowing. Each Defendant is therefore liable to Plaintiff for her actual
9 damages, statutory damages, and attorney's fees and costs pursuant to *Ca. Civil Code §1788.30*.

11 **WHEREFORE**, Plaintiff respectfully requests that judgment be entered against
12 Defendants Persolve, Account Resolution Associates and Shveta Kumbhani for the following:
13 Damages against Defendant for actual or statutory damages, and punitive damages, attorney's
14 fees and costs, pursuant to *15 U.S.C. §1681n*.

15 Actual damages pursuant to *47 U.S.C. §227(b)(3)(B)*. Statutory damages pursuant to
16 *47 U.S.C. §227(b)(3)(c)*;

18 Actual damages pursuant to *15 U.S.C. §1692k (a)(1)*, and *Ca. Civil Code*
19 *§1788.30(a)*;

20 Statutory damages pursuant to *15 U.S.C. § 1692k (a)(2)(A)* and *Ca. Civil Code*
21 *§1788.30(b)*;

22 Costs and reasonable attorney's fees pursuant to *15 U.S.C. §1692k (a)(3)* and *Ca.*
23 *Civil code §1788.30(c)*;

24 For such other and further relief as the Court may deem just and proper.

26 RESPECTFULLY SUBMITTED,

27 DATED: October 25, 2015

28 By: TE Terrace Ellis

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